UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

D&S ENTERPRISES, INC., d/b/a
CHEHALIS SHOP 'N KART

Employer

and Case 19-RD-3588

ANN HOUGE, An Individual

Petitioner

and

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 367, AFL-CIO, CLC

Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding, the undersigned makes the following findings and conclusions.[2]

[1] Both the Employer and the Union filed timely briefs, which were duly considered. The Petitioner participated in the hearing but did not file a brief.

[2] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

SUMMARY

On August 8, 2003, the Petitioner filed the instant petition seeking a decertification election in a unit of 56 employees (Unit) employed by the Employer at its grocery store and represented by the Union since at least 1990. The Union contends that the petition is untimely in that the Employer and the Union are party to a collective-bargaining agreement, which bars an election in this matter. Contrary to the Union, the Petitioner and Employer contend that the correspondence, which is relied upon by the Union as constituting a bar to the instant petition, does not constitute a collective-bargaining agreement, and, thus, does not act as a bar to an election.

Based on the record as a whole, I conclude that the correspondence relied on by the Union is not sufficient for contract bar purposes. Thus, I find the petition timely filed and, consequently, I shall direct that an election be held in the Unit.

Below, I have set forth a section dealing with the facts, as revealed by the record in this matter and relating to background information concerning the history of bargaining in the Unit between the Employer and the Union, and a section on the recent correspondence between the Union and the Employer as it relates to the contract bar issue. Following the Fact section is a restatement of the Parties' position, my analysis of the applicable legal standards in this case and a section setting forth the direction of election.

A.) FACTS

1.) Background

The Employer is a State of Washington corporation and since about 1990, it has engaged in the retail grocery business with a facility located in Chehalis, Washington. Also since about 1990, the Employer has entered into "me too" agreements with the Union. "Me too" agreements, in this context, are agreements to essentially adopt agreements reached between the Union and Allied Employers, Inc., (Allied), a multi-employer association representing major grocery chains located throughout western Washington State. The Union's negotiations with Allied often resulted in labor agreements that "independents," or those stores not part of the Allied employer association, such as the Employer, have signed or adopted in the form of "me too" agreements. The Union has represented grocery, meat, drugstore and department store workers in six or seven counties,[3] in this manner, and presently administers 12 to 15 collective-

[3] The record reflects the Union has agreements with other employers in Pierce, Thurston, Grays Harbor, Lewis, King, Mason and Pacific Counties.

bargaining agreements with various employers whose operations are located in certain western counties of Washington.[4]

The record reveals that in most negotiations with employers, the Union generally follows a certain geographic process to negotiating its labor agreements in Western Washington. In particular, it appears that the Union negotiates with Allied over certain Allied clients/stores located in King and Pierce Counties. Upon conclusion of those negotiations, that agreement is then extended to other employers in outlying counties with modifications made along the way. In effect, this sequence or progression of agreements appears to move from the northwestern counties of the State to the southwestern counties, the latter of which includes Lewis County where the Employer's operations are located.[5] The Allied contracts cover certain counties and employers on a countywide basis.[6]

On June 27, 1990, the Employer and Union signed a "me-too" agreement whereby the parties agreed to be bound by the agreement negotiated between the Union and Allied for Lewis County for the term April 1, 1990, through April 4, 1993.[7] It is undisputed that the parties entered into successive labor agreements for the periods of April 4, 1993 to March 31, 1996 and for March 31, 1996 to April 4, 1999.

On June 5 and June 16, 1998, the Employer and the Union respectively signed a letter of understanding or a "me too" agreement whereby they adopted the Allied "Puget Sound" agreements covering employees in Pierce, King and Kitsap Counties.[8] These Puget Sound agreements were not submitted for the

[4] It is not clear as to whether this number of agreements represents agreements with just Allied member stores or with Allied and the independents, combined.

[5] The Union, in its brief, characterizes the process as beginning with UFCW, Local 1105 first negotiating with Allied for agreements with those stores located in counties that center around the greater Seattle and King County area. Those agreements are then applied to Pierce County, with minor variations bargained between the Union and Allied. After the Union and Allied reach agreement for Pierce County, they, then, negotiate an extension of that agreement for Lewis County and the other outlying counties with minor variations, including wage rate modifications.

[6] I shall refer to the Allied agreements by their counties, such as the Lewis County agreement or the Pierce County agreement.

[7] For some reason not apparent from the record, the Employer and the Union entered into an agreement explicitly between them, for the same duration as the above agreement, which was signed by the Employer on October 1, 1990, and by the Union's president on September 20, 1990. On September 9, 1991, the Employer and Union entered into an agreement to "extend" the "current collective bargaining agreements on the same terms and conditions as the extended area meat and grocery agreements recently negotiated with Allied Employers, Inc., on the appropriate dates." The record is unclear as to what agreement is being "extended" and what agreements had been recently negotiated with Allied Employers, Inc.

[8] As noted above, it appears that the labor agreements negotiated by the UFCW and Allied were entitled with the names of the counties, which they covered, and the reference to "Puget Sound" agreements or proposals apparently and generally refers to a grouping of labor agreements geographically in close proximity to the Puget Sound area of Washington. That is, there does not actually exist a labor agreement entitled "Puget Sound Agreements."

record. There was no mention of the duration of the letter of understanding or of the Puget Sound agreements. Although, testimony indicates that the letter of understanding reflected early negotiations for a 1999 to 2002 agreement. However, the Employer denies there was a signed agreement for the 1999 to 2002 period and it is not clear when and if such an agreement expired. Regardless, the Union does not point to this disputed agreement alone as the contract that bars the instant petition.

2.) Recent Correspondence Relating to the Contract Bar Issue

Negotiations for a 2002 to 2005 agreement started early. On June 5, 2001, Ruth Underwood, Union representative, verbally requested that Frank Wesson, the Employer's representative, sign a "me-too" agreement, but he declined to sign. Underwood, in her testimony at the hearing in this matter, did not indicate the specifics of the "me too" agreement that she requested the Employer to sign.[9] Instead of signing, according to Underwood, Wesson decided to wait and see what would happen when Allied's agreement expired in April of 2002. Underwood did not indicate to which expiring agreement Wesson was referring. According to the Union, the agreement between the Union and the Employer due to expire was the adopted 1999-2002 Lewis County agreement.[10] The Union did not submit any document signed by the Employer adopting the 1999-2002 Lewis County agreement. Moreover, the last "me too" agreement signed by the parties in 1998, appeared to be linked to the "Puget Sound agreements."

On January 9, 2002, the Union notified Wesson that it intended to negotiate changes to the then "existing" agreement. On February 21, 2002, the Union notified the Employer that the Union ratified the Puget Sound agreements covering employees in Pierce, Mason, Thurston, and Grays Harbor Counties and was advised by Safeway that it would propose to the Union the same terms in Safeway's stores located in Lewis County.[11] In that same letter, the Union asked the Employer to adopt the Allied Puget Sound agreements. A signature line was provided for the Employer in the Union letter but the Employer never signed the letter adopting the Allied Puget Sound agreements.

The Union also submitted a letter written by Underwood to the Employer's owner, Darris McDaniel, dated March 20, 2002, summarizing what she regarded as the status of the Employer's proposals for a new successor agreement.

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[9] Underwood was one of two witnesses who testified at the hearing in this case. The other witness was an employee called to testify on behalf of the Petitioner.

[10] The term of that agreement was from April 4, 1999 to April 6, 2002.

[11] I note in the record that the precise definition of the term "Puget Sound agreements" appears to be fluid. At one point in past negotiations between the parties, the geographic boundaries of Puget Sound agreements appears to this reader to include counties different from those counties included in the recent negotiations relating to the contract bar issue. The fluid nature of this definition is not explained in the record.

Next, it appears that, on March 27, 2002, the Employer, according to the Union, submitted a listing of certain numbered contract provisions or paragraphs with noted changes, some of which were initialed off on and apparently accepted, others were apparently rejected while still other provisions/paragraphs were noted for further discussion by the parties. At the end of the submission, the Employer apparently stated that it "reserves the right to amend, modify, add to or delete any of the above proposals." There is no signature on this Employer submission and the Union's only witness at the hearing in this case did not identify whose initials appear on the submission.[12] Moreover, the submission does not identify which labor agreement the submission is addressing with the noted changes. Finally, it is apparent on the face of the submission that the Employer had addressed only certain provisions or paragraphs, from some unidentified, unreferenced labor agreement.

On March 29, 2002, Wesson wrote the following letter to Finley Young, the Union's attorney:

> Further to my meeting with Bob Mehler and Ruth Underwood on Wednesday, March 27 at Chehalis Shop 'n Kart, enclosed is the employer's proposed language for establishing a basis to reopen the labor agreements[13] on April 6, 2003 and April 4, 2004 in the event the employer experiences the inability to pay either the then current hourly rates of pay and/or the new hourly rates of pay scheduled for the aforementioned dates.
>
> After your review, please contact me so that we may finalize the language and submit the employer's last and final offer for submission to the Chehalis Shop'n Kart bargaining unit.

Attached to the Employer's letter are proposed employee wage rates for the then current year as well as for 2003 and 2004. Attached to the letter are also 4 paragraphs concerning procedures in the event the Employer may not be able to pay for the negotiated pay increases.

In the Employer's first paragraph, it proposes, if it experiences an inability to pay the negotiated wage rates, to reopen negotiations on specific dates during the term of the agreement. In this paragraph, the Employer further proposes that, if the parties fail to reach agreement following the reopening, they are free to take unilateral action. The second paragraph allows the Union to conduct an audit of the Employer's books to ascertain whether the Employer is unable to pay

[12] It does appear that the initials are that of one person.

[13] It appears that the Union represents at least two separate units at the Employer's Chehalis store, the Unit involved herein and a meat department unit. The latter unit is not at issue in this case. The term "agreements," referred to by the Employer, was not defined by Wesson's March 29, 2002, mailing.

the increases in the event the Employer gives such a notice. The third paragraph allows for the Employer to conduct an independent audit to verify its inability to pay. The fourth paragraph directs that no details of the audits shall be revealed to the bargaining unit.

Apparently the Union did not receive the Employer's March 29, 2002, letter before it sent its own letter of the same date. In that letter to Wesson, Underwood stated that the Union had not received a fax from Wesson. Consequently, the Union had its attorney, Finley Young, draft a letter of understanding, which was included with the letter mailed to the Employer. The Union's letter of understanding dealt with the same concerns the Employer addressed in its 4 paragraphs described above, but with noted differences.

Also on March 29, 2002, Teresa Iverson, the Union's president, faxed Wesson a letter confirming the Union's understanding that the Employer is adopting the Allied Lewis County agreements as the collective bargaining agreements for the term April 7, 2002 through April 3, 2005. The fax also laid out the conditions under which wage reopeners would occur during the term of the parties' agreement. This fax provided a signature line for Wesson to sign and date if he adopted Iverson's understanding. It is undisputed that the Employer never signed this document.

On April 1, 2002, the Union re-faxed Finley Young's March 29, 2002, letter of understanding, stating that it was not a revision to the agreement, but a letter of understanding, and asked Wesson to sign it. It is further undisputed that the Employer did not sign this understanding.

On April 5, 2002, Wesson sent the Union the Employer's "last and final offer" for submission to the bargaining units. Attached to Wesson's letter is a letter of understanding slightly modifying its original 4 paragraphs to 5 paragraphs and adding a sixth paragraph stating, "This letter of understanding incorporates the Grocery/Meat Agreements between [the Employer] and [the Union] for the term of April 7, 2002 through April 3, 2005." There is no corresponding letter signed by the Union accepting this offer. It is not clear from this letter, to which agreements Wesson's letter refers.

On April 10, 2002, Wesson faxed another letter of understanding entitled "Regarding the D&S Enterprises dba Chehalis Shop 'n Kart Grocery and Meat Agreements 2002-2005."[14] Wesson's fax also contained three paragraphs covering the following proposals: the Employer's right to reopen due to an inability to pay; allowance for a Union audit if the Employer is unable to pay the increases called for under an unidentified, unreferenced labor agreement; and Union language providing for negotiations on dissemination of the details of the audit to the bargaining unit. There is no mention of incorporating any particular

[14] Other than the fax itself, no other document entitled D&S Enterprises dba Chehalis Shop 'n Kart Grocery and Meat Agreements 2002-2005 was submitted for the record.

agreement in the form of a "me too" situation. Rather, the fax merely states "Regarding" the "Grocery/Meat Agreements." Wesson, on April 10, 2002, and Iverson, on April 16, 2002, signed this letter of understanding (hereinafter "April 10/16 letter of understanding").

On April 19, 2002, the Union sent out a letter to unit members stating that the Employer has agreed to extend the "Puget Sound Proposal to its Food and Meat Agreement" with the exceptions noted in the April 10/16 letter of understanding. The Union claims that a ratification vote was conducted pursuant to this April 19, 2002, mailing. However, the only employee to testify at the hearing in this matter testified that she did not receive the April 19, 2002, mailing and that she did not vote on ratification of any agreement pertaining to the April 19, 2002, mailing. At the hearing in this case, the Union questioned the employee regarding whether she had moved to a new address and, thus, did not receive the mailing from the Union. However, the employee testified that she had moved prior to the April 19, 2002, mailing, had notified the Union of the move and had received other mailings from the union at her new address prior to April 19, 2002.

The Union submitted documents into the record, which would indicate that the Employer might have implemented certain provisions of an alleged, unspecified agreement with the Union. Those documents pertain to a grievance that was signed off by the Employer, the Union and an employee and that appears to have been processed by the parties; printouts from a Union welfare, pension and retirement fund showing contributions by the Employer; and a Union letter disputing the Employer's apparent implementation and/or enforcement of an Employer handbook that contravenes the contract that Union contends is a bar to an election this case.[15]

B.) POSITION OF THE PARTIES

Petitioner seeks a decertification of the Unit represented by the Union. The Union maintains the position that the petition is untimely in that it has a collective-bargaining agreement with the Employer that bars an election in this matter.

In support of its position in this case, the Union argues, that the April 10/16 letter of understanding signifies the Employer and Union's culminating agreement on all issues negotiated. As to this point, the Union further argues that the heading on the letter of understanding —"Regarding the D&S Enterprises dba Chehalis Shop 'n Kart Grocery and Meat Agreements, 2002-2005" — incorporates a number of documents including the following: the 1999-2002 Lewis County agreement; Iverson's March 29, 2002, letter to the Employer which contains the Union's characterization of the Employer's March 27, 2002,

[15] It would appear that the Union's dispute, over the Employer handbook, tends to undermine the Union's contention the Employer has implemented a contract barring the instant petition.

submission proposing changes to the 1999-2002 Lewis County agreement; the Allied proposed wage rates for Lewis County; and the April 10/16 letter of understanding and the correspondence leading up to that letter of understanding. Second, the Union argues that the membership ratified the agreement with the Employer, which agreement was "keyed" to the existing labor agreements for "Pierce and Lewis" Counties. Third, the Union contends an agreement can be inferred because the Employer had implemented the new Lewis County proposal wage rates, trust fund contributions and dispute procedures.

The Petitioner and Employer deny a current collective-bargaining agreement exists. According to the Employer, the April 10/16 letter of understanding is a "stand alone document" that does not clearly incorporate the Pierce or Lewis county proposals or any other document for that matter, and does not contain terms and conditions of employment sufficient to stabilize the Employer's and Union's bargaining relationship.[16]

C.) ANALYSIS

The sole issue before me is whether the Employer's and Union's exchange of letters and documents is sufficient for contract bar purposes. Because a finding of contract bar necessarily results in the restriction of the employees' right to freely choose a bargaining representative, an agreement must meet certain formal and substantive requirements in order to bar an election. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958); *Seton Medical Center*, 317 NLRB 87 (1995). The Board has long required, for contract-bar purposes, that the contract: (1) be signed by both parties prior to the filing of the petition that it would bar; (2) contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship; and (3) have a definite duration if it is to serve as a bar to an election. See id.; *Cind-R-Lite Co.*, 239 NLRB 1255 (1979). However, the document signed need not be a formal collective-bargaining agreement, nor must the signatures appear on the same document. Recognizing that parties do not always ceremonially sit down to sign a formal, final, document upon the successful conclusion of negotiations, the Board has held that informal documents laying out substantial terms and conditions of employment can serve as a bar, so long as those informal documents are signed. See *De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998); *Seton Medical Center*, supra at 87; *Television Station WVTV*, 250 NLRB 198, 199 (1980); *Georgia Purchasing, Inc*., 230 NLRB 1174 (1977).

[16] The Employer also contends that no collective-bargaining agreements existed between the Union and Allied because a dispute arose regarding the preparation of the agreements. The Employer misses the point with this contention. The issue is not whether Allied and the Union negotiated and executed a labor agreement. Rather, the issue is whether the Union has a signed and executed an agreement with the Employer. Finally, the Employer asserts that the Union's witness, Ruth Underwood, is incompetent as a witness to the bargaining history of the unit. As discussed more fully below, Board law establishes that this contention is irrelevant to the issue at hand.

However, this flexibility does not excuse the parties from the fundamental requirement that they signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing to other documents which do so. See *Seton Medical*, supra at 87-88. Moreover, in representation cases, the Board has consistently limited its inquiry to the four corners of the document or documents alleged to bar an election and has excluded the consideration of extrinsic or parole evidence.[17]

In sum, what the Board requires for contract bar purposes, is that the party asserting a contract bar produce documentary evidence that sufficiently establishes on its face the terms of the agreement, leaves no doubt that it represents a signed offer and acceptance of those terms, and provides for a definite duration. *Waste Management of Maryland, Inc.*, 338 NLRB No. 155 (2003); *Cind-R-Lite Co*., supra; *Roosevelt Memorial Park.*

In *Branch Cheese*, 307 NLRB 239 (1992), the Board found no contract bar where it was uncertain from the exchange of documents what offer the union was accepting, despite the fact that the parties had implemented the terms of the alleged contract for almost a year before the petition was filed. There, the employer presented a full contract offer on October 12, 1990, and then made several later amendments on December 12, 1990. The union sent a letter accepting the contract stating that the agreement was ratified. The Board noted that the union's letter failed to specify which agreement the union was accepting—the original offer or the amended offer. Accordingly, because the union's letter failed to spell out or refer to specific language that purportedly constituted the contract, the Board concluded that the evidence was "not sufficient to establish the identity or the terms of the purported agreement." Id. at 240.

In *Waste Management of Maryland, Inc.*, supra, the Board found no contract bar where the parties' exchange of written materials left much doubt as to the terms of the alleged contract. In that case, the union's September 18, 2002, acceptance letter referred only to the employer's "final offer" of "September 13, 2002." The union, however, failed to produce a single document, other than its own acceptance letter, which referred to or embodied a September 13 offer.

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[17] See *United Health Care Services*, 326 NLRB 1379 (1998)(limiting inquiry into whether a contract required ratification for contract-bar purposes to the face of the documents and excluding parole evidence); *Jet-Pak Corp.*, 231 NLRB 552 (1977)("The Board has consistently held that the 'legality of a contract asserted as a bar is to be determined in representation proceedings from the face of the contract itself and that extrinsic evidence will not be admitted…'"); *Union Fish Co.*, 156 NLRB 187, 191-192 (1965)("[T]he Board requires that the term, as well as the adequacy of a contract, must be sufficient on its face, with no resort to parole evidence necessary, before the contract can serve as a bar."). In view of this Board law, the Employer's contention regarding the competency of Underwood to testify about the parties' negotiations relates to issues which are extrinsic to the central issue in this case of whether documents exist for contract bar purposes. Therefore, I need not address the Employer's contention concerning Underwood's competency.

It is well settled that the party asserting that a contract is a bar to an election bears the burden of proof. *Roosevelt Memorial Park, Inc*., 187 NLRB 517 (1970); *Appalachian Shale*, supra. Thus, the Union bears the burden of proof in this case with respect to its contract bar claim.

Here, the Union has strung together a number of documents that it claims constitute an agreement between the parties for contract bar purposes. The record discloses that the Employer sent letters to the Union with its "last and final" offer on March 29, 2002 and again on April 5, 2002. The April 5th letter also "incorporated" the Grocery/Meat agreements between the Employer and the Union. However, there are no corresponding Union documents signed by a union official agreeing to these terms. Indeed, the entirety of both Employer last and final offers is missing from the record, with the exception of the Employer's wage proposal.

Likewise, the Union sent a February 21, 2002, letter essentially requesting the Employer sign a "me too" agreement agreeing to be bound by the Allied Puget Sound agreements. Then, on March 29, 2002, the Union's president, Iverson, sent a letter to the Employer outlining the Union's understanding that the Employer was adopting the Allied Lewis County agreement. So, confusion continues as to whether the parties are agreeing to a number of labor agreements referred to as the Allied Puget Sound agreements, which has geographically changed over the years as to the agreements and/or counties that make up this grouping, or whether the parties are agreeing to be bound by the Allied Lewis County agreement. Thus, this particular Union correspondence fails to clearly refer to or incorporate any labor agreement or agreements.

As for the Employer's March 27, 2002, submission and its purported linkage to Finley Young's March 29, 2002, letter to the Employer, that submission only includes certain contract provisions and indisputably does not specifically refer to other provisions. Additionally, the Union could not identify who had initialed off certain provisions addressed by the Employer in that submission. The submission further notes the need for discussion on other specific provisions and also rejects other provision proposals. Significantly, the submission does not identify the document it is purporting to change or supply the language agreed to by the parties.[18] Finally, there is also no beginning and ending date for the agreement referenced by the Employer in this submission. As such, the initialed submission is vague, ambiguous and lacks a specific duration. Thus, it cannot alone or in conjunction with other documents bar an election in this proceeding.

[18] If we were to assume from the documents that the proposal was to change the then soon to expire agreement, the only agreement on record is one adopting the 1999-2002 Puget Sound agreements which the parties had adopted in 1998, not the 1999-2002 Lewis County agreement. The 1999-2002 Puget Sound Agreements were not submitted for the record.

The record discloses that the only document, signed by both the Employer and Union in connection with the Union's claim of a contract bar, is the April 10/16, 2002 letter of understanding. The Union relies heavily on this letter of understating and claims that it incorporates all the issues raised in negotiations as referenced by the document's heading—"Regarding the D&S Enterprises dba Chehalis Shop 'n Kart Grocery and Meat Agreements, 2002-2005." I disagree. The heading of this document does not incorporate or refer to any particular document. Rather, it merely states, "regarding" some, unspecified documents. Moreover, the remaining body of the letter of understanding also fails to refer to or incorporate any particular labor agreement(s). Thus, one is left wondering whether the "regarding" refers to Allied's Lewis County rate proposals; the 1999-2002 Lewis County agreement; the Employer's proposed changes (allegedly) to the 1999-2002 Lewis County agreement; the 1999-2002 or 2002-2005 Puget Sound agreements; and/or some other agreement(s) or proposal(s). In any event, the Union avers it is a combination of the above-described documents along with the exchange of letters between it and the Employer during the period of 2001 and 2002 that constitute the contract bar. However, Board law requires that the *documents* themselves must clearly reflect the connections leading to an agreement sufficient to bar the petition -- here, the Union's mishmash of various documents critically fails in this regard. *Jet-Pak*, supra; *Union Fish*, supra.

Although the April 10/16 letter of understanding constitutes a signed offer and acceptance, it cannot stand on its own to bar the instant petition because it fails to contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Appalachian Shale*, supra. In this regard, the 3 paragraphs of the April 10/16 letter of understanding refer only to reopening negotiations on wages if the Employer is unable to pay the agreed to increases. I further note that there is no document signed by both parties that clearly sets forth what the agreed to wage rates are. Thus, the document is vague in this regard. In any event, even if such a document were provided, a contract that is limited to wages only will not constitute a bar. Id. at 1163-1164.

Further, to act as a bar to an election, a document must provide a definite duration. *Cind-R-Lite*, supra. The dates on the April 10/16 letter of understanding, 2002-2005, are vague and, thus, do not provide sufficient certainty for contract bar purposes. Namely, when in 2002 did the purported agreement become effective and when in 2005 does it expire?[19]

In light of the above and the record evidence, I find the April 10/16 letter of understanding, whether in conjunction with other documents or standing alone, does not bar the instant petition.

[19] The absence of an execution date in a contract does not remove the contract as a bar if it is established that the contract was, in fact, signed before a petition has been filed. *Cooper Tank & Welding Corp.*, 328 NLRB 759 (1999).

The Union's second argument is based on the employees' ratification vote pursuant to the Union's April 19, 2002, mailing to employees, which the Union contends further supports its position that a contract bar exists. However, I find this second argument unpersuasive and extrinsic to the issue of whether a contract bar exists on the following three grounds. First, the argument is unpersuasive because the sole witness testified that she did not receive the mailing and did not participate in a ratification vote. So, there is a genuine issue of fact as to whether a ratification vote occurred. Second, I note that the Union does not contend that the mailing, itself, constitutes the contract barring the instant petition. So, the mailing is extrinsic to that issue, which is truly the only material issue before me. Moreover, the Union mailing sheds no more light on the contract bar issue than do the other documents placed before me by the Union. Third, there is nothing in this record, which indicates that ratification is a condition precedent to any contract agreed to by the parties. Thus, evidence relating to the ratification is not germane to the contract bar issue at hand. See *Aramark Sports & Entertainment*, 327 NLRB 47, fn. 3 (1998); *Appalachian Shale*, supra.

Regarding the Union's third argument, the Union contends that the Employer implemented the new Lewis County proposal wage rates, trust fund contributions and dispute procedures and that this also supports the Union's position that a contract bar exists. However, the Board has held that no bar attaches to a contract where there is uncertainty as to what offer is being accepted despite the fact that parties have implemented the terms of the alleged contract. *Branch Cheese*, supra. As already noted, there is no submitted document or documents signed by both parties that clearly sets forth the adoption of any of the current Allied county agreements and/or proposals. In short, the fact that the Employer may have implemented selected contract provisions is not dispositive of the issue of whether a contract exists for election bar purposes.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in the Employer's and Union's briefs, I conclude that the alleged contract between the Employer and the Union does not act as a bar to the processing of the instant petition. Therefore, I order an immediate Election.

The Unit, as stipulated to by the parties, consists of all full-time and regular part-time grocery, produce, deli, bakery, non-food and service center employees employed by the Employer at its Chehalis, Washington, facility; excluding all meat department employees, all other employees, owner, general manager, guards and supervisors as defined by the Act.

There are approximately 56 employees in the unit.

D.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD AND COMMERCIAL WORKERS LOCAL 367, AFL-CIO, CLC.

1. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office in Seattle, Washington, an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before September 23, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the

requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (206) 220-6305. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

2. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

3. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on September 30, 2003**.** The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 16th day of September 2003.

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James R. Kobe, Acting Regional Director
National Labor Relations Board, Region 19
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Seattle, WA 98174

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